

Appl. No. : 10/628,831
Filed : July 28, 2003

REMARKS

Claims 14-39 are now pending in the present application, Claims 14 and 17 having been amended, and Claims 36-39 having been added. The claims set forth above include marking to show the changes made by way of the present amendment, deletions being in ~~strikeout~~ and additions being underlined.

In response to the Office Action mailed June 9, 2005, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments.

The Applied Combination of Rickards/McManigal Does Not Make Obvious Claims 14-17 and 20-35

Claims 14-17 and 20-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,012,812 issued to Rickards in view of U.S. Patent No. 5,327,178 issued to McManigal. Applicants respectfully traverse the present rejection. However, in order to expedite prosecution of the present application, Applicants have amended Claims 14 and 17. Applicants also expressly reserve the right to further prosecute the original and previously presented versions of Claims 14-25 through continuation practice.

Rickards teaches safety goggles having a speaker head flexibly and communicably secured to a receiver assembly so as to permit variable positioning of the speaker head. McManigal teaches a loudspeaker carried by a support structure, which includes a closed loop sleeve to be placed over the ear stem of eyeglasses. However, both Rickards and McManigal fail to teach, inter alia, an electrical conduit extending from the speaker through at least a portion of the first mounting mechanism.

Section 2143 of the M.P.E.P. states that to establish prima facie obviousness, the following three requirements must be met:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both

Appl. No. : 10/628,831
Filed : July 28, 2003

be found in the prior art, and not based on the Applicant's disclosure.

Without commenting on the presence of a suggestion or motivation to combine the reference teachings, or the indication of a reasonable expectation of success, Applicants contend that the Examiner has failed to establish a prima facie case of obviousness at least because the prior art references, when combined, fail to teach or suggest all of the claim limitations.

The structures of the devices of Claims 14 and 17 include an electrical conduit extending from the speaker through at least a portion of the first mounting mechanism and an electrical conduit extending from the first earphone through at least a portion of the first earphone support, respectively.

In contrast, the Rickards and McManigal references fail to disclose an electrical conduit extending from a speaker or earphone through a mounting mechanism or earphone support as claimed. For example, Rickards teaches a speaker head 63 flexibly and communicably secured to a speaker assembly by a generally elongate, flexible speaker connection 64. See Rickards, column 6, lines 19-21; see also Rickards, FIGS. 1 and 5. Similarly, McManigal teaches a flexible lead 51 connecting a speaker assembly 50 to a personal stereo unit, car phone, or other audio sources. See McManigal, column 6, lines 30-32; see also McManigal, FIGS. 4 and 5. Therefore, even if the Rickards reference could be combined with the McManigal reference, the combination still would fail to teach all the elements of Claims 14 or 17.

Additionally, Applicants submit that Claims 15, 16, and 20-35 also define over the combination of the Rickards and McManigal references, not only because they depend from one of Claims 14 or 17, but also on their own merit. Therefore, Applicants respectfully request allowance of Claims 14-17 and 20-35.

The Applied Combination of Rickards/McManigal/Vaudrey Does Not Make Obvious Claims 18 and 19

Claims 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rickards in view of McManigal and further in view U.S. Patent No. 6,311,155 issued to Vaudrey. Applicants respectfully traverse the present rejection. As noted above, Applicants submit that Claim 17 clearly and non-obviously defines over the combination of the Rickards and

Appl. No. : **10/628,831**
Filed : **July 28, 2003**

McManigal references. Thus, Applicants submit that Claim 18 and 19 also define over the prior art, not only because they depend from Claim 17, but also on their own merit.

New Claims 36-41 Are In Condition For Allowance On Their Merits

New Claims 36-41 are fully supported by the original specification, and thus, no new matter has been introduced. Further, Applicants submit that Claims 36-41 clearly and non-obviously define over the Rickards, McManigal and Vaudrey references, not only because they depend from one of Claims 14 or 17, but also on their own merit.

Appl. No. : 10/628,831
Filed : July 28, 2003

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 9, 2005

By: 

Michael A. Guiliana
Registration No. 42,611
Attorney of Record
Customer No. 20,995
(949) 760-0404

1938033_1
110905